

1 BILL LOCKYER, Attorney General  
of the State of California  
2 PAUL C. AMENT  
Supervising Deputy Attorney General  
EDWARD K. KIM, State Bar No. 195729  
3 Deputy Attorney General  
California Department of Justice  
4 300 So. Spring Street, Suite 1702  
Los Angeles, CA 90013  
5 Telephone: (213) 897-7336  
Facsimile: (213) 897-9395  
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7 Attorneys for Complainant

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9 **BEFORE THE**  
**PHYSICAL THERAPY BOARD OF CALIFORNIA**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
10 **STATE OF CALIFORNIA**

Case No. 1D 2004 63921

11 In the Matter of the First Amended  
12 Accusation Against:

OAH No. 200606080279

13 ESTHER BUMACOD  
12618 Knights Bridge Place  
14 Bakersfield, CA 93312

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

15 Physical Therapist License No. PT 12164  
16 Respondent.

17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the  
18 above-entitled proceedings that the following matters are true:

19 **PARTIES**

20 1. Steven K. Hartzell (Complainant) is the Executive Officer of the Physical  
21 Therapy Board of California. He brought this action solely in his official capacity and is  
22 represented in this matter by Bill Lockyer, Attorney General of the State of California, by  
23 Deputy Attorney General Edward Kim..

24 2. Respondent Esther Bumacod (Respondent) is represented in this  
25 proceeding by attorney Robert D. Harding, Esq., whose address is Clifford & Brown, 1430  
26 Truxton Avenue, Suite 900, Bakersfield, CA 93301-5230.

1           3.       On or about June 8, 1984, the Physical Therapy Board of California issued  
2 Physical Therapist License No. PT 12164 to Esther Bumacod. The License was in full force and  
3 effect at all times relevant to the charges brought in First Amended Accusation No. 1D 2004  
4 63921 and will expire on June 30, 2007, unless renewed.

5                               JURISDICTION

6           4.       First Amended Accusation No. 1D 2004 63921 was filed before the  
7 Physical Therapy Board of California (Board), Department of Consumer Affairs, and is currently  
8 pending against Respondent. The First Amended Accusation and all other statutorily required  
9 documents were properly served on Respondent on September 26, 2006. Respondent timely  
10 filed her Notice of Defense contesting the original Accusation. A copy of First Amended  
11 Accusation No. 1D 2004 63921 is attached as exhibit A and incorporated herein by reference.

12                               ADVISEMENT AND WAIVERS

13           5.       Respondent has carefully read, fully discussed with counsel, and  
14 understands the charges and allegations in First Amended Accusation No. 1D 2004 63921.  
15 Respondent has also carefully read, fully discussed with counsel, and understands the effects of  
16 this Stipulated Settlement and Disciplinary Order.

17           6.       Respondent is fully aware of her legal rights in this matter, including the  
18 right to a hearing on the charges and allegations in the First Amended Accusation; the right to be  
19 represented by counsel at her own expense; the right to confront and cross-examine the witnesses  
20 against her; the right to present evidence and to testify on her own behalf; the right to the  
21 issuance of subpoenas to compel the attendance of witnesses and the production of documents;  
22 the right to reconsideration and court review of an adverse decision; and all other rights accorded  
23 by the California Administrative Procedure Act and other applicable laws.

24           7.       Respondent voluntarily, knowingly, and intelligently waives and gives up  
25 each and every right set forth above.

26                               CULPABILITY  
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**Comment [COMMENT1]:** Incorporation by reference  
Incorporation by reference is a pleading technique by which a document or writing is appended to a pleading made part of the pleading by language which asserts that attached document is "incorporated by reference as if fully set forth herein." (See Witkin, Cal. Procedure (4<sup>th</sup> ed. 1997) Pleading – Right to Plead by Reference § 388 p. 486.)  
"A party whose cause of action or defense in some way involves a written document may, of course, plead its execution and its terms and effect in the same way as he pleads other facts. Often, however, he will merely allege the execution directly, and set forth a copy of the instrument to speak for itself on its terms and effect. Incorporating an exhibit by proper reference to it in the pleading gives the pleader a convenient means of alleging the facts concerning the terms and effect of a document, which may save him considerable time and thought and avoid the possibility of inadvertent omission of some essential averments." (*Ibid.*)  
The practice is recognized in California. (See citations in Witkin § 389 et seq.)

1                   8.       Respondent admits the truth of each and every charge and allegation in  
2 First Amended Accusation No. 1D 2004 63921.

3                   9.       Respondent agrees that her Physical Therapist License is subject to  
4 discipline and she agrees to be bound by the Board's imposition of discipline as set forth in the  
5 Disciplinary Order below.

6                                   CIRCUMSTANCES IN MITIGATION

7                   10.       Respondent Esther Bumacod has never been the subject of any  
8 disciplinary action. She is admitting responsibility at an early stage in the proceedings.

9                                   RESERVATION

10                  11.       The admissions made by Respondent herein are only for the purposes of  
11 this proceeding, or any other proceedings in which the Physical Therapy Board of California or  
12 other professional licensing agency is involved, and shall not be admissible in any other criminal  
13 or civil proceeding.

14                                   CONTINGENCY

15                  12.       This stipulation shall be subject to approval by the Physical Therapy  
16 Board of California. Respondent understands and agrees that counsel for Complainant and the  
17 staff of the Physical Therapy Board of California may communicate directly with the Board  
18 regarding this stipulation and settlement, without notice to or participation by Respondent or her  
19 counsel. By signing the stipulation, Respondent understands and agrees that she may not  
20 withdraw her agreement or seek to rescind the stipulation prior to the time the Board considers  
21 and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the  
22 Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this  
23 paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall  
24 not be disqualified from further action by having considered this matter.

25                  13.       The parties understand and agree that facsimile copies of this Stipulated  
26 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same  
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**Comment [COMMENT2]:** This provision protects us and the agency from its use of Government Code § 11126, subdivision (q) of the Public Meeting Law, which allows a board to confer with and receive advice or a memorandum from its counsel in a closed session concerning administrative litigation, without requiring disclosure of the memo under the Public Records Act [§ 6254.25 of that Code] or waiving the attorney-client privilege under Evidence Code § 950.

1 force and effect as the originals.

2 14. In consideration of the foregoing admissions and stipulations, the parties  
3 agree that the Board may, without further notice or formal proceeding, issue and enter the  
4 following Disciplinary Order:

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7 **DISCIPLINARY ORDER**

8 IT IS HEREBY ORDERED that Physical Therapist License No. PT 12164 issued  
9 to Respondent Esther Bumacod shall, by way of letter from the Board, be publicly reprovved by  
10 the Physical Therapy Board of California for violating Business and Professions Code sections  
11 2620.7 and 2630, and subdivisions (i), (j), and (k) of section 2660 and California Code of  
12 Regulations, title 16, section 1399 as set forth in First Amended Accusation No. 1D 2004 63921;  
13 provided, however, that said public reprovral is conditional upon Respondent's full compliance  
14 with paragraphs 1 and 2 below.

15 1. **COST RECOVERY The respondent is ordered to reimburse the**  
16 **Board the actual and reasonable costs of investigation and prosecution incurred by the**  
17 **Board in this matter in the amount of \$21,332.50. Said costs shall be reduced, however,**  
18 **and the remainder forgiven, if Respondent pays \$5,000 within thirty (30) days of the**  
19 **effective date of this Decision. In the event respondent fails to pay \$5,000 within thirty (30)**  
20 **days of the effective date of the Decision, the full amount of costs shall be immediately due**  
21 **and payable. Failure to pay the ordered reimbursement, or any agreed upon payment,**  
22 **may constitute a violation of this order. The filing of bankruptcy by Respondent shall not**  
23 **relieve Respondent of her responsibility to reimburse the Board. If Respondent is in**  
24 **default of her responsibility to reimburse the Board, the Board will collect cost recovery**  
25 **from the Franchise Tax Board, the Internal Revenue Service, or by any other means of**  
26 **attachment of earned wages legally available to the Board. Failure to fulfill the obligation**

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1 could also result in attachment to Department of Motor Vehicle registrations and or license  
2 renewals.

3 2. WRITTEN EXAM ON THE LAWS & REGULATIONS GOVERNING  
4 THE PRACTICE OF PHYSICAL THERAPY Within 90 days of the effective date of this  
5 decision, Respondent shall take and pass the Board's written examination on the laws and  
6 regulations governing the practice of physical therapy in California. If Respondent fails to pass  
7 the examination, Respondent shall be suspended from the practice of physical therapy until a  
8 repeat examination has been successfully passed. Failure to comply with this condition  
9 constitutes a material breach of this order.

10 3. PRACTICE OR PERFORMANCE OF PHYSICAL THERAPY WHEN  
11 SUBJECT TO PUBLIC REPROVAL It is not contrary to the public interest for the Respondent  
12 to practice and/or perform physical therapy after issuance of the public reproval. Accordingly, it  
13 is not the intent of the Board that this order or the fact that the Respondent has been publicly  
14 reproved shall be used as the sole basis for any third party payor to remove Respondent from any  
15 list of approved providers.

16 4. FAILURE TO COMPLY WITH ORDER A material breach by  
17 Respondent of this order shall constitute unprofessional conduct and shall be a basis for further  
18 disciplinary action by the Board. In such circumstances, the Complainant may reinstate the  
19 First Amended Accusation in case number 1D 2004 63921, file an amended accusation and/or  
20 file a supplemental accusation alleging any material breach of this order by Respondent as  
21 unprofessional conduct.

22 ACCEPTANCE

23 I have carefully read the above Stipulated Settlement and Disciplinary Order and  
24 have fully discussed it with my attorney, Robert D. Harding, Esq. I understand the stipulation  
25 and the effect it will have on my Physical Therapist License. I enter into this Stipulated  
26 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be  
27

1 bound by the Decision and Order of the Physical Therapy Board of California.

2 DATED: November 17, 2006.

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4 Original Signed By:  
5 ESTHER BUMACOD  
Respondent

6 I have read and fully discussed with Respondent Esther Bumacod the terms and  
7 conditions and other matters contained in the above Stipulated Settlement and Disciplinary  
8 Order. I approve its form and content.

9 DATED: \_\_\_\_\_.

10 Original Signed By:  
11 ROBERT D. HARDING, ESQ.  
Attorney for Respondent

12 ENDORSEMENT

13 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully  
14 submitted for consideration by the Physical Therapy Board of California of the Department of  
15 Consumer Affairs.

16 DATED: November 17, 2006

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18 BILL LOCKYER, Attorney General  
of the State of California

19 PAUL C. AMENT  
20 Supervising Deputy Attorney General

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22 Original Signed By:  
23 EDWARD K. KIM  
Deputy Attorney General

24 Attorneys for Complainant

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1                                   **BEFORE THE**  
2                                   **PHYSICAL THERAPY BOARD OF CALIFORNIA**  
3                                   **DEPARTMENT OF CONSUMER AFFAIRS**  
4                                   **STATE OF CALIFORNIA**

5   In the Matter of the First Amended  
6   Accusation Against:

Case No. 1D 2004 63921

OAH No. 200606080279

ESTHER BUMACOD  
12618 Knights Bridge Place  
Bakersfield, CA 93312

Physical Therapist License No. PT 12164

Respondent.

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10                                   **DECISION AND ORDER**

11                   The attached Stipulated Settlement and Disciplinary Order is hereby  
12                   adopted by the Physical Therapy Board of California, Department of Consumer  
13                   Affairs, as its Decision in this matter.

14                   This Decision shall become effective on February 26, 2007.

15                   It is so ORDERED January 26, 2007.

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19                   Original Signed By:  
20                   FOR THE PHYSICAL THERAPY BOARD OF CALIFORNIA  
21                   DEPARTMENT OF CONSUMER AFFAIRS  
22                   Nancy Krueger, PT, President  
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